IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/06/2003

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The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice M. THANIKACHALAM

W.P. No.11236 of 1999

Xavier Sellappan ..... Petitioner

-Vs-

1. The Registrar
Central Administrative Tribunal
Chennai Bench
Chennai

2. Union of India, rep. by the
Union Territory of Pondichery
though its Deputy Secretary
Finance Department, Pondichery
and sixty-seven others ..... Respondents

Petition under Art.226 of the Constitution praying for a
Writ of Certiorarified Mandamus as stated in the petition

For Petitioner :: Mr. r. Subramaniam

For Respondents :: Mr. Mustaffa for
Government Pleader
Pondichery (R2)

No Appearance for R3 to R-69

:ORDER

(Order of the Court was made by V.S. SIRPURKAR, J.)

This writ petition is filed by one Xavier Sellappan, with a request for seniority and proper placement over and above the respondents. The following facts will help to understand the controversy involved.

2. Petitioner is essentially challenging the dismissal of his original application, which came to be dismissed by the Central Administrative Tribunal. In that original application, the petitioner's case was that after

completing his S.S.L.C. examination in the year 1974, his name was sponsored by the Executive Engineer of Pondichery for recruitment as apprentice in the trade of Storekeeper. The petitioner appeared for the required examination and was successful. He was allowed to undergo the training for one year in the District Rural Development Agency, Pondichery on a monthly stipend of Rs.230/-.

2.1. It seems that while the training was going on, the Union Territory of Pondichery felt the dearth of employees in the cadre of storekeeper Grade III. The Government, therefore, proposed to directly recruit some storekeepers probably, after holding some examination for the purposes of selection. In fact, the petitioner himself, if he had successfully completed the training and passed the Trade Test, would have been appointed as the Storekeeper Grade III only. Likewise, the other trainees also would have become Storekeeper Grade III, after they had completed their training as the apprentices and passed the subsequent trade test.

2.2. However, since this would have taken time and the Government required the services of the Storekeeper Grade III, the Government came out with an offer of temporary posts as has been stated earlier from the open market. A general offer was made for that purpose and a clear understanding was given in that offer that such Storekeepers, who were non-apprentice Storekeeper and were from the open market, if they were selected and appointed as Storekeepers, they would still be treated as juniors to the apprentices who would eventually pass the trade test after completion of training and pursuant appointment. In fact, this offer was also given to the apprentices like the petitioner and his colleagues that they may terminate the apprenticeship and may choose to join as Storekeeper Grade III in which case, they would also not be required to return their stipend but, they would be treated as juniors to their colleagues who would eventually complete the apprenticeship training and pass the subsequent trade test. It seems that out of the apprentices who were undergoing training along with the petitioner, some persons accepted this offer and chose to become the Storekeeper Grade III and also accepted to be juniors.

2.3. So far so good. Things got a different twist because the Trade Test which the batch of the apprentices like the petitioner was to take was the 49th Trade Test. That 49th Trade Test was conducted somewhere in the month of December 1988 and the results were declared on 9-12-1998. The apprentices, who passed the Trade Test were also given the appointment as Storekeeper Grade III on 20-12-1988. However, the open market candidates like the present respondents were selected on 30-8-1988 and were given the appointment on 1-9-1988 yet these persons, who got their appointment on 1-9-1988 i.e. much earlier to the apprentices Storekeepers, were shown as juniors to the apprentices who were appointed later on.

2.4. In short, the Government had given a complete go-by to the principle of continuous officiation in the matter of seniority under the extraordinary situation which had arisen. The case of the petitioner, however, is still stranger because he failed to pass the 49th Trade Test and ultimately passed the next Trade Test, i.e. 50th Trade Test only in April

1989 and was thereafter made the Storekeeper Grade III. The petitioner, however, was not shown senior to the nonapprentice Storekeepers Grade III probably because the petitioner failed to pass the 49th Trade Test. It is on this account that the petitioner approached the Tribunal.

2.5. The Tribunal, however, held that since the petitioner was not successful at the 49th Trade Test, he was not even included in the seniority list and his claim for the placement in the seniority list at No.183, i.e. just above the non-apprentice Storekeepers Grade III could not be accepted.

3. The petitioner has joined all these non-apprentice Storekeepers as party-respondents but none appears on their behalf.

4. The order of the Tribunal was supported by the learned Government Pleader for the Union Territory of Pondichery.
5. Learned counsel for the petitioner firstly suggests that though some other issues were also involved, there would be no question of going to those other issues in view of the findings thereupon and the only issue to which he would address would be the issue of seniority. Learned counsel for the petitioner clarified that after passing the 50th Trade Test, the petitioner has undoubtedly been appointed as the Storekeeper and, therefore, he does not have any grievance in so far as the aspect of appointment is concerned. The only contention raised by the learned counsel for the petitioner is about the inclusion of the petitioner□s name in the seniority list meant for Storekeepers Grade III and his proper placement therein. According to the learned counsel, the language of the offer made by the Government of Pondichery clearly suggests that under any circumstances, the apprentice storekeepers would be shown as seniors to those who are nonapprentice Storekeepers even if the apprentice Storekeepers eventually enter the Government service after the non-apprentice Storekeepers.

6. Learned counsel invites our attention to the peculiar language of the offer letter. Heavy reliance is placed by the learned counsel on the memorandum dated 30th August 1988. He points out that this was the offer given generally to the apprentices as well as nonapprentices and paragraph 9 thereof reads as follows:
□In respect of Apprentice Store Keepers now undergoing training in various departments who have been selected and are included in the annexure their engagement as Apprentice will be terminated with effect from the date of their report for duty. However, the stipends drawn by them need not be repaid to Government. These Storekeeper Apprentices who are now offered appointment as Storekeeper Grade-III will rank junior to those Apprentice who are now undergoing training as Store Keeper Apprentice and who eventually qualify after passing their trade test and who will be appointed as Store Keeper Grade-III in future. The existing Store Keeper Apprentices who are now offered regular appointment as Store Keeper Grade-III will have to give an undertaking that they are prepared to abide by this condition regarding their seniority. If they are not willing to abide by this condition they have the option to remain as Store Keeper Apprentices and eventually qualify in the trade test. In that case they can reject this offer of appointment and need

not join as Store Keeper Grade-III. If they join as Store Keeper Grade-III it will be deemed that they have accepted this condition of inter-seniority vis-a-vis existing Store Keeper Apprentices who will eventually qualify.
(emphasis supplied)
Learned counsel points out that the language of this clause itself suggests that all that was required for the apprentice Storekeepers was to pass the Trade Test eventually. It does not say that they had to pass a particular Trade Test or for that matter their failure to pass the impending Trade Test was to affect their seniority one way or the other vis-a-vis the non-apprentice Storekeepers Grade-III. Learned counsel points out that the petitioner in this case had, though not succeeded in the 49th Trade Test, barely after four months succeeded in the next Trade Test and was also eventually appointed as the Storekeeper Grade-III. Petitioner says that in so far as the Storekeepers Grade-III are concerned, he belongs to the category of the apprentice Storekeeper and that he had also eventually cleared the Trade Test and, therefore, his seniority should be fixed above the nonapprentice Storekeepers as per the language of paragraph 9 which we have quoted above.

7. As against this, learned Government Pleader appearing for the Union Territory of Pondichery pointed out that though the petitioner has eventually passed the Trade Test and has become the Storekeeper, he could not be given an indefinite period to pass the Trade Test and further, it was an accepted position that the petitioner joined as the Storekeeper Grade III only after the non-apprentice Storekeepers had joined and were appointed. Therefore, according to the learned counsel, even as per the principle of continuous officiation it is just proper that those non-apprentice Storekeepers should be shown as seniors to the petitioner who joined as Storekeeper only afterwards. It is not disputed that the petitioner eventually joined the services on 25-5-1989.

8. In so far as the seniority aspect is concerned, the Tribunal did accept the case that the apprentice storekeepers would have to be shown as seniors to the non-apprentice storekeepers. In paragraph 21, the Tribunal has clearly returned that finding. In that, the Tribunal also took into account the undertaking given by the nonapprentice storekeepers as regards their readiness to be shown as juniors to the apprentice storekeepers. However, the Tribunal observed:
Similarly, applicants who had continued to undergo Storekeeper Apprentices Training but could not pass the 49th All India Trade Test cannot claim the seniority since protection was given only to those Storekeeper Apprentices who passed the forthcoming i.e. 49th All India Trade Test. Since he (the concerned applicant) failed this test and passed only on the subsequent i.e. 50th All India Trade Test, he will get seniority only as per normal rules. The benefit of protection cannot be said to be applicable in his case. This is clear from a reading of the condition reproduced at para 19 above. It is implicit in the condition laid and in the logic of the very scheme of things that protection of seniority could only be given to those Storekeeper Apprentices who successfully cleared the Trade Test at the end of their training, i.e. the 49th All India Trade Test and not the Trade Test in any subsequent years.
The Tribunal then in paragraph 22 proceeds to hold that on this logic the

petitioner could not be allowed to take the advantage of the seniority as offered in clause 9 of the memorandum.

9. On a careful examination of the language of the whole memorandum, we are of the clear opinion that the Tribunal erred in holding that the petitioner could not be given the benefit of seniority because he had not passed the 49th All India Trade Test and had passed the subsequent Trade Test, i.e. 50th Trade Test. It will be seen that firstly in the language of paragraph 9 of the memorandum, which we have quoted above, there is nothing to suggest that the apprentice candidates had to pass the impending first Trade Test that they would appear in. The phraseology used is "who eventually qualify after passing their Trade Test". Now it is not as if there is only one Trade Test meant or that the apprentices were not to have any second chance for passing the Trade Test. The user of the words "eventually qualify" would clearly suggest that the only condition for the apprentice storekeepers was that they had to complete their training and ultimately pass the Trade Test which was a sine quo non for their appointment as the Storekeepers. It is quite clear that unless apprentice Storekeepers had passed the Trade Test, they could not have been appointed as Storekeepers and probably, therefore, the words used are "who eventually qualify after passing their Trade Test". The language is slightly general however, it never suggests that what was meant was the passing of the first impending Trade Test. All that was required was passing of the Trade Test eventually. This phraseology is also subsequently used only after two lines in repeating the words eventually qualifying in the Trade Test. By no logic could we read the Trade Test meant was to be the first impending Trade Test after finishing the training. The reason why we are taking this view is that there is a clear indication in the memorandum dated 30-8-1988 that for the purposes of seniority, the principle of continuous officiation was deliberately and studiously avoided by the Government. In fact, the apprentice Storekeepers would have entered the Government service only after the non-apprentice Storekeepers but, they were to be treated as senior Storekeepers perhaps owing to their training or perhaps because of their being selected as the apprentices and thereafter by passing the Trade Test. If this principle was ignored then, it would have to be held that the argument of continuous officiation would not be available to the Government at all. Unfortunately, the Tribunal has missed this aspect. If the Tribunal's interpretation is accepted then we would have to read paragraph 9 differently and we would have to read some extra words as "eventually qualifying in the first trade test after their training" in this paragraph. The words "first trade test" or the "impending trade test" or "the next trade test" not being present in paragraph 9, it is very clear that the intention was that under any circumstances the apprentice Storekeepers were to be treated as seniors. We, therefore, cannot accept the view expressed by the Tribunal particularly in original application (O.A. No.191 of 1995) and would choose to allow the writ petition.

10. With the result, the order of the Tribunal is set aside in so far as it is adverse to the petitioner and the petitioner shall be placed in the seniority list immediately just above the non-apprentice Storekeepers. The writ petition is allowed to the extent indicated above.

Under the circumstances, there shall be no order as to the costs.

Index:Yes
Website:Yes

Jai/-

To:

1. The Registrar
Central Administrative Tribunal
Chennai Bench
Chennai

2. Union of India, rep. by the
Union Territory of Pondichery
though its Deputy Secretary
Finance Department,
Pondichery